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Supreme Court, U.S.
FILED
SEP 21 2004
OFFICE OF THE CLERK

No. 04-79

IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO-ORTEGA AND PATRIZIA BLANCO-ORTEGA,

Petitioners,

v.

STAR-KIST FOODS, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

REPLY BRIEF OF PETITIONERS

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September 21, 2004

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REPLY BRIEF OF PETITIONERS

As the Petition for Certiorari shows, the federal circuits are deeply divided over the effect of 28 U.S.C. § 1367 upon the amount-in-controversy requirement in multi-plaintiff cases,[1] Pet. 10-13, and this issue is important and recurring, and calls for a uniform resolution by this Court, Pet. 13-15. The Petition further demonstrates that the application of § 1367 in the non-class context is in many respects identical to its application in the class context, but that the non-class analysis is logically antecedent to the class analysis, which requires consideration of several additional, complicating issues. Pet. 15-19. Petitioners also showed that the decision below is incorrect. Pet. 19-24.

Respondent does not dispute the certworthiness of the question whether § 1367 authorizes the district courts to exercise supplemental jurisdiction over related claims of additional plaintiffs who do not satisfy the amount-in-controversy requirement, as it arises in the class action context. Indeed, Respondent affirmatively concedes that "the circuit split on the 'class action' issue now involves nine circuits, with multiple circuits on each side," and that there is a three-circuit split in the non-class context. Opp. 2.

Nor does Respondent dispute that the class and non-class cases present this precise issue in different contexts, and that the non-class version of the issue logically comes first (and is less complex than the issue as it arises in the class context). Respondent admits that the issue, in the class context, "has already been fully briefed and argued to th[is] Court and vetted by nine courts of appeals," Opp. 3, and does not deny that it warrants resolution by this Court. And it offers no

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[1] In addition to the cases discussed in the Petition (at 11), see *Olden v. LaFarge Corp.*, No. 02-1148, 2004 WL 1960157 (6th Cir. Sept. 7, 2004) (holding that § 1367 abrogates *Zahn v. International Paper Co.*, 414 U.S. 291 (1973)).

substantive response to Petitioners' showing that the First Circuit construed the statute incorrectly on the merits.

Unable to dispute the central facts showing that review by this Court is necessary, Respondent makes several peripheral and unpersuasive arguments against granting the Petition.

1. Respondent's primary argument is that the circuit split on the non-class version of the issue is less well-developed than in the class context. Opp. 2-3. Respondent asserts that, "[a]t a minimum, it would be appropriate to allow the numerous courts of appeals that have not yet decided the issue an opportunity to consider the First Circuit's lengthy and thoughtful opinion in this case." *Id.*

But this suggestion ignores the fact that the two splits are part and parcel of a single interpretive question regarding the effect of the supplemental jurisdiction statute on the amount-in-controversy requirement in multi-plaintiff cases. *See* Pet. App. 35a-36a. While it is conceivable that the issue might be resolved differently in the two factual contexts, it is certain that the Court's reasoning in one context will greatly influence, if not determine, the outcome in the other. And the logical relationship of the two analyses — with the non-class case for supplemental jurisdiction being more straightforward than in the class context — strongly suggests that the non-class issue should be resolved before determining the more difficult, class-action version of the issue.

In particular, analysis of the issue in the non-class context is less complex for several reasons. An essential predicate for the exercise of supplemental jurisdiction is that the supplemental claims arise from "the same case or controversy" as those properly in court under 28 U.S.C. § 1332. 28 U.S.C. § 1367(a). While Rule 20 joinder itself has this same case or controversy requirement as an essential prerequisite, it is less obvious whether (and when)

claims of multiple plaintiffs brought together by way of Rule 23 should be regarded as "part of the same case or controversy," thus satisfying an essential predicate of § 1367(a). Pet. 16.

In addition, whereas § 1367(b) deals expressly with the instance of Rule 20 joinder and, on its face, provides for supplemental jurisdiction in cases like this one, that section makes no reference at all to Rule 23. Pet. 17. And the legislative history, to the extent it may be relevant, provides expressly that § 1367 is not intended to affect the jurisdictional requirements of § 1332 in diversity-only class actions. Pet. 17. It contains no similar statement about Rule 20 joinder. Finally, there is the fact, as noted by Judge Easterbrook, that the expansion of federal court jurisdiction effected by finding supplemental jurisdiction in the non-class context is far more modest than if it is found in the class-action context. It is, thus, "easy to imagine [Congress] wanting to overturn *Clark* but not *Zahn*; it is much harder to imagine wanting to overturn *Zahn* but not *Clark*." *Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 931 (7th Cir. 1996).

2. Respondent also argues that certiorari should be denied because the merits of "the ordinary joinder issue is not simple but very difficult." Opp. 3 (internal quotation marks omitted). Of course, Petitioner has not argued that the issue is simple — few issues that have so deeply divided the federal courts could properly be characterized as "simple." The point is that the merits analysis in the case of joinder is both integrally related to and demonstrably *less* complex than in the case of class actions, for the reasons noted above and described more fully in the Petition.

3. Respondent also argues that this case is a poor vehicle for resolving the split. Respondent does not dispute that the issue was raised and squarely resolved below in lengthy and

very thoughtful majority and dissenting opinions. The arguments Respondent does make are meritless.

First, Respondent's argument about the size of the "financial stakes" (Opp. 4) is one which would ensure that this issue is never addressed by this Court. Obviously, a question about the existence of supplemental federal court jurisdiction over claims smaller than $75,000 can only arise in cases where the "financial stakes" for the claims at issue are relatively small. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938) (holding that amount-in-controversy requirement is not independently satisfied if it appears to a legal certainty that the claim is for less than the jurisdictional amount). Respondent offers no authority for the proposition that recurring and disputed jurisdictional issues should be ignored by this Court simply because they inherently arise only in cases where modest financial stakes are in issue.

Second, Respondent's argument that the Court should deny certiorari due to the allegedly unusual alignment of the parties in this case is unpersuasive on several grounds. The suggestion that usually "the plaintiff seeks to litigate in state court, while the defendant prefers a federal forum," Opp. 4-5, is a gross overgeneralization. A primary reason for original diversity jurisdiction is that plaintiffs may often prefer a federal forum over a state tribunal that could be partial to the defendant. *See, e.g., Pease v. Peck*, 59 U.S. (18 How.) 595, 599 (1855). Obviously, as in this case from Puerto Rico — where the plaintiffs elected to file in federal court — parties select or prefer various fora in different cases for different reasons.

Lurking in these arguments about the amount at stake and the alleged misalignment of parties is at least a hint that the Petition should be denied because, under the circumstances, Respondent cannot be counted upon to vigorously litigate the

issue in this Court.[2] Respondent suggests that the parties' interests in other cases "could affect the parties' arguments before this Court." Opp. 5. Yet Respondent vigorously and successfully litigated the same issues in the court of appeals, presumably without pulling punches out of concern for precedential consequences.

The suggestion that a major American corporation should be immune from defending an otherwise certworthy appellate-court decision in this Court because it has mixed feelings about the legal basis of its victory should be rejected out of hand. Coming from such a party, this rope-a-dope strategy of feigned reluctance to participate vigorously in litigation before this Court is hardly credible. Even if it were otherwise, it is not an argument to which this Court could give credence without undermining the integrity of federal-court litigation at all levels.

These suggestions also do a discredit to the professionalism and integrity of the members of the Supreme Court bar who would litigate this case if the Petition were granted. There is no reason to suppose that the lawyers who have been retained by the parties would do anything less than brief and argue the case vigorously.[3]

Finally, Respondent suggests (Opp. at 5) that the First Circuit's holding "that one of the plaintiffs meets the

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[2]A similar suggestion (addressed to the motivations of both sides) was made more bluntly by the respondents in *Exxon Corp. v. Allapattah Services, Inc.*, No. 04-70 (U.S. Pet. for Cert. filed July 14, 2004), Br. in Opp. at 21-22.

[3]Notwithstanding that Scott T. Rickman, Associate General Counsel of Del Monte Foods, appears as counsel of record on Respondent's Memorandum in Opposition, all of Petitioners' dealings with counsel for Respondent have been with Robert Long of Covington & Burling, whose office filed a motion for an extension of time in this Court and issued the proof of service on Respondent's Memorandum in Opposition.

$75,000 amount-in-controversy requirement" is "questionable." That is not a ground for denying certiorari, as that factual issue was fully resolved below against Respondent, and Respondent has not cross-petitioned for certiorari on that issue (which would have been necessary for review of that holding because the acceptance of Respondent's argument by this Court would expand the relief that Respondent obtained from the Court of Appeals). *See Northwest Airlines, Inc. v. County of Kent*, 510 U.S. 355, 364 (1994). In any event, Respondent's suggestion (Opp. at 5) that an award to Beatriz exceeding $75,000 would be excessive under the peculiarities of Puerto Rico remittitur law, applicable here under *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996), is simply wrong: the law of Puerto Rico imposes no such "'substantive cap . . . on damages.'" *Grajales-Romero v. Am. Airlines, Inc.*, 194 F.3d 288, 300 (1st Cir. 1999) (quoting *Mejias-Quiros v. Maxxam Property Corp.*, 108 F.3d 425, 427 n.1 (1st Cir. 1997) (alteration in *Grajales-Romero*)).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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